

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3855

IN THE MATTER OF:

Served December 3, 1991

Application of MIJU EXPRESS, INC.,)
for Temporary Authority --)
Irregular Route Operations)

Case No. AP-91-35

By application filed October 21, 1991, Miju Express, Inc. (Miju or applicant), seeks temporary authority to transport passengers, together with baggage in the same vehicles as passengers, in irregular route operations between points in the Metropolitan District.

Notice of this application was given in Order No. 3836, served October 29, 1991. Protests were due November 13, 1991. None were filed.

SUMMARY OF EVIDENCE

Miju proposes to conduct operations using a 1990, 20-passenger "mini-coach." Miju's proposed tariff contains rates for hourly charter service and for charter transfer service.

Miju's application contains information regarding, among other things, its corporate status, facilities, driver qualifications and training practices, vehicle maintenance program and repair policy, finances, and familiarity with USDOT safety regulations and WMATC rules and regulations.

Miju supports its application with the notarized affidavit of Mr. Young S. Kim, its president and majority stockholder and owner of Washington U.S. Tours. Mr. Kim avers that issuance of temporary authority to Miju is important to assure continuity of service for tour groups booked through Washington U.S. Tours, which recently discontinued offering the service for which Miju now seeks temporary authority. Mr. Kim further avers that Washington U.S. Tours requires a carrier that is punctual and will accept changes in charter plans and that no other carrier can provide this service with such a high degree of control. Finally, Mr. Kim stresses the need for Korean-speaking drivers.

DISCUSSION AND CONCLUSIONS

The Compact, Title II, Article XI, Section 13(a) provides that:

When the Commission finds that there is an immediate need for service that is not available, the Commission may grant temporary authority for that service without a hearing or other proceeding up to a maximum of 180 consecutive days, unless suspended or revoked for good cause.

In addition, fitness of the applicant is also an issue. See Order No. 3827 and other orders cited therein. Accordingly, to grant temporary authority, the Commission must determine that (1) there is an immediate need for service; (2) that service is not available; and (3) the applicant is fit to provide that service. Fitness involves considerations of compliance fitness, financial fitness, and operational fitness.

As discussed below, Miju's application for temporary authority is denied for insufficient evidence of immediate need for service. Accordingly, we do not reach the issues of carrier unavailability and Miju's fitness.

First, Mr. Kim has failed to identify any objective facts demonstrating immediacy of need for the service in question. Nowhere does he point to an imminent event which would indicate an immediate need for the service in question. He merely concludes -- on what basis we are not told -- that Washington U.S. Tour's need for transportation service is "continuing." Mr. Kim's conclusory statements do not rise to the level of probative evidence.

Second, and more importantly, even if we were to credit Mr. Kim's averments as to the immediacy of need, his affidavit standing alone is insufficient to establish the fact of need. This was precisely the basis for denying Mr. Kim authority in 1985, when he applied as Washington U.S. Tours, a sole proprietorship. In Order No. 2712, served June 6, 1985, we held against Mr. Kim as follows:

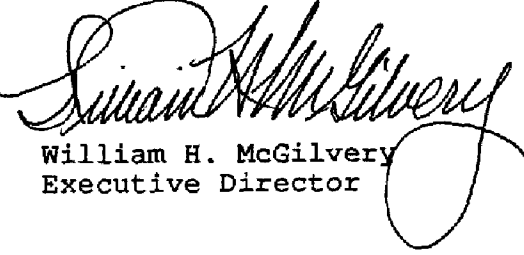
For the reasons discussed below, we find that the applicant has failed to carry its burden of proving public convenience and necessity, and the permanent authority application, therefore, must be denied. The failure is attributable to an absence of substantial evidence of public need. The only evidence on this point was that offered by Mr. Kim on his own behalf. While Mr. Kim's testimony is admissible, standing alone it is insufficient to support a grant of operating authority.

Id. at p. 9 (emphasis added).

The same result obtains here. As a corporation, Miju can speak only through its officers, agents and employees. Mr. Kim is Miju's President/Treasurer. Thus, Miju's only evidence of need is its own representations. Considering that the applicable standard of proof has not changed since Order No. 2712 was issued, see Sea Island Broadcasting Corp. v. FCC, 627 F.2d 240, 243 (D.C. Cir.) (preponderance of evidence traditional standard of proof in administrative proceedings), cert. denied, 449 U.S. 834 (1980); Charlton v. FCC, 543 F.2d 903, 907 (D.C. Cir. 1976) (preponderance of evidence minimum standard), we are constrained to hold that Miju has failed to make out a prima facie case for temporary authority. See Order No. 2712 at p. 10.

THEREFORE IT IS ORDERED that the application of Miju Express, Inc., for temporary authority in Case No. AP-91-35 is hereby denied.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:



William H. McGilvery
Executive Director